

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 146, 147 and 149 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

JIVANBHAI BHANABHAI HIRABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioners

MR BY MANKAD, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/07/98

COMMON ORAL JUDGEMENT

These petitions under Article 226 of the Constitution challenge the judgement and order dated 11.11.1997 passed by the Urban Land Tribunal in Appeal Nos. 66 and 67 of 1995 and 33 of 1996 filed by the three sons of Jivanbhai Hirabhai Patel against the order dated 21.7.1995 passed by the Competent Authority and Deputy Collector, Surat under the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the Act").

2. Jivanbhai Hirabhai Patel and his three sons Nagarjibhai, Ranchhodbhai and Harivadan had filled in forms under Section 6 of the Act disclosing that they were holding the following lands :-

Sr. Name of Survey Area How the land was acquired
No. village No. Sq.mts. and its use.

1. Rander 339/1 708 Agricultural land received by sale under Tenancy Act.

2. " 337/1 9308 -do-

3. Rander 255 4956 Agricultural land received by sale for residence under Tenancy Act.

4. Rander 278 6981 Agricultural land purchased by sale deed together with the house.

5. " 256 15176 Agricultural land received by sale alongwith house under Tenancy Act.

6. Pisad 20/1/1 6070 Agricultural land received by sale deed alongwith well.

7. Rander 54 2428 Agricultural land received by sale deed under Tenancy Act

8. " 82 32375 -do-

9. Adajan 420 151-80 Land alongwith house paiki received for migration due to flood of the year 1959.

It was also pointed out that Jivanbhai Hirabhai was granted exemption under Section 20 of the Act in respect of the following agricultural lands :-

Sr.No. Village Survey No. Area (Sq.Mts.)

1.	Rander	337/1	7808
2.	"	255	3642
3.	"	278	6981
4.	"	256	12583

Ultimately, the Competent Authority after referring to the written representation dated 30.8.1994 (Annexure B) submitted by the petitioners held that the total holding of the four holders was 41,209.80 sq.mtrs., out of which Jivanbhai was holding 7183 sq.mtrs., Nagarjibhai was holding 151.80 sq.mtrs. and Ranchhodbhai was holding 32,875 sq.mtrs. Hence, it was declared that late Jivanbhai was holding 4182 sq.mtrs. of land as excess vacant land and Ranchhodbhai was holding 1,875 sq.mts. of land as excess vacant land after excluding the agricultural land covered by application for exemption under Section 20(1) of the Act. It was further declared that Nagarjibhai was not holding any excess land as his holding was only 151.80 sq.mtrs.. The Competent Authority, however, did not proceed further in the matter as the application for exemption under Section 20 of the Act was pending and, therefore, the Competent Authority proceeded only upto the stage of issuance of notifications under Section 10(1) of the Act awaiting the orders on the application under Section 20 of the Act.

3. During pendency of the proceedings before the Competent Authority, Jivanbhai expired in the year 1987. Hence, the three brothers filed the above numbered appeals before the Urban Land Tribunal against the notification under Section 10(1) of the Act. After hearing the parties, the Tribunal confirmed the order noting that the application under Section 21(1) was pending and the application under Section 20 was also pending and, therefore, the orders passed by the Competent Authority for proceeding upto Section 10(1) of the Act are confirmed and further orders are to be passed after the decision on the aforesaid applications for exemption under Sections 20 and 21 of the Act.

4. In the present petitions challenging the aforesaid orders, Mr P.J. Vyas, learned counsel for the petitioners has made the following grievances :-

(i) The land in the name of Ranchhodbhai Jivanbhai in Survey No. 82 was made available by virtue of the tenancy proceedings in which the orders were passed and the mutation entry No. 253 was made on 13.7.1972, which was certified on 12.12.1972. It is submitted that the land was cultivated by Jivanbhai and his three sons, i.e. present petitioners and

their joint family and that merely because the orders under the Tenancy Act were passed in favour of Jivanbhai and Ranchhodbhai in their individual names, it would not mean that the lands were only held by two individuals when the father and three sons were staying as a joint family and cultivating the lands jointly.

- (ii) It is further submitted that the petitioners had submitted their written representation alongwith necessary evidence on 30.8.1994 (Annexure "B" to the petition). The said writing is already referred to in the order of the Competent Authority at internal page 17 of the order (running page No. 51 of the paper book) and even then the Competent Authority has erred in not taking the relevant facts into consideration and the Tribunal also grossly erred in not referring to the material contained and produced alongwith the said representation dated 30.8.1994 (Annexure "B" to the petition).
- (iii) It is submitted that under the Hindu Law, there is a presumption that joint family is joint unless the contrary is proved. The authorities ought to have appreciated that the agriculturists in rural area jointly live in joint families and that judicial notice of the said fact is required to be taken. However, the authorities have betrayed urban outlook in this respect and have failed to recognize the realities of the Indian rural life.
- (iv) It is last submitted that when the petitioners' applications under Section 20 for the Act in respect of Survey No. 20/1/1 of village Pisad and application under Section 21 of the Act in respect of Survey No. 82/5 of village Rander are pending for all these years, the authorities are required to consider and decide the same expeditiously.

5. On the other hand, Mr Mankad, learned AGP for the respondents has supported the orders of the authorities and contended that it was for the petitioners to prove their case to the hilt and beyond reasonable doubt and that the authorities have not committed any error apparent on the face of record.

6. Having heard the learned counsel for the parties, this Court is inclined to accept the submissions of Mr Vyas that the material produced by the petitioners before the Competent Authority was sufficient to enable the Competent Authority to arrive at the conclusion that the lands are

joint family properties and that all the three petitioners herein i.e. the sons of Jivanbhai had already attained majority long prior to the date of coming into force of the Act. The lands in question were earlier cultivated by Hirabhai, father of Jivanbhai and grand-father of Ranchhodbhai. Ranchhodbhai was born on 4.11.1924, Nagarjibhai was born on 13.3.1928 and Harivadanbhai was born on 23.9.1944. The petitioners had also produced the certificates in support of the said averments. In fact, two sons of Ranchhodbhai and two sons of Nagarjibhai had also attained majority before the date of coming into force of the Act. From the aforesaid details, it is clear that Ranchhodbhai is the eldest of the three sons. It is not uncommon in the rural agricultural families that when the land is purchased, the name of the eldest son may be shown as the owner or the tenant of the property.

In this set of circumstances, the case of the petitioners that the lands were purchased from the agricultural income earned by joint agricultural operations by Jiavanbhai and his three sons, i.e. the present petitioners, was required to be accepted by the Competent Authority and the Tribunal. The decision dated 6.5.1994 of this Court (Coram : Mr Justice A.N. Divecha, J.) in Special Civil Application No. 2753 of 1998 also support the view being taken in these petitions. Having arrived at this conclusion and proceeding on that basis, it must be held that the Competent Authority was required to allocate shares in the land as if there was deemed partition on 17.2.1976 which would mean -one share to Jivanbhai, one share to his wife-Paniben who was alive on the date of coming into force of the Act and one share to each of three sons i.e. the present petitioners. In this view of the matter, upon deemed partition of the joint family properties by virtue of the provisions of Section 4 (9) of the Act, each of the three sons is entitled to hold 1500 sq.mtrs. of land in the Surat Urban Agglomeration, whereas the holding of Jivanbhai and wife Paniben i.e. two shares would be clubbed under one unit. The Court has not examined the petitioners' contention that their sisters i.e. the daughters of Jivanbhai were also entitled to shares in the HUF property upon deemed partition. In any case, during pendency of the proceedings before the Competent Authority, the father and the mother of the petitioners both expired. Upon their death, succession opened in favour of not only the three petitioners but also their sisters Dahiben, Naniben, Shantiben, Bhikhiben, Lalitaben and Kashiben whose names are mentioned in the pedigree at Annexure "A" to the petition. The Competent Authority will, therefore, have to compute the holding of the petitioners and their sisters by taking into account

the above developments also.

7. Moreover, the petitioners' application under Section 20 of the Act is pending in respect of the land bearing Survey No. 20/1/1 admeasuring 7933 sq.mtrs. in village Pisad. Similarly an application under Section 21(1) of the Act is still pending, in respect of Survey No. 82 of Rander as stated by the learned counsel for the petitioners who has pointed out that the previous order dated 7.6.1995 passed by the Competent Authority rejecting the petitioners' application for exemption under Section 21(1) of the Act was set aside by the Tribunal on 31.5.1995 in Appeal No. (Surat) 62 of 1995 (Annexure "H" - 102 of the paper book).

8. In view of the foregoing discussion, these petitions are required to be allowed and the matters are required to be remanded to the Competent Authority for computing the holding of the petitioners afresh in light of the observations made in this judgment and proceeding on the footing that the lands in question are joint family properties.

9. In view of the fact that the petitioners' application under Section 20 of the Act in respect of land bearing survey No. 20/1/1 and the petitioners' application under Section 21 of the Act in respect of the land bearing Survey No. 82 admeasuring 32,375 sq.mtrs. are still pending, the respondents are directed to decide the same as expeditiously as possible and in any case within three months from the date of receipt of a certified copy of this order.

10. The petitions are accordingly allowed. Rule is made absolute to the aforesaid extent.

Sd/-

July 24, 1998 (M.S. Shah, J.)